

Effective 5/12/2015

Part 2
Utah Capital Investment Board

63N-6-201 Utah Capital Investment Board.

- (1) There is created within the office the Utah Capital Investment Board to exercise the powers conferred by this part.
- (2) The purpose of the board is to mobilize venture equity capital for investment in a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.
- (3) In the exercise of its powers and duties, the board is considered to be performing an essential public purpose.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-202 Board members -- Meetings -- Expenses.

- (1)
 - (a) The board shall consist of the following five members:
 - (i) the state treasurer;
 - (ii) the director or the director's designee; and
 - (iii) three members appointed by the governor and confirmed by the Senate.
 - (b) The three members appointed by the governor shall serve four-year staggered terms with the initial terms of the first three members to be four years for one member, three years for one member, and two years for one member.
 - (c) The governor shall appoint members of the board based on demonstrated expertise and competence in:
 - (i) the supervision of investment managers;
 - (ii) the fiduciary management of investment funds; or
 - (iii) the management and administration of tax credit allocation programs.
- (2) When a vacancy occurs in the membership of the board for any reason, the vacancy shall be:
 - (a) filled in the same manner as the appointment of the original member; and
 - (b) for the unexpired term of the board member being replaced.
- (3) Appointed members of the board may not serve more than two full consecutive terms except when the governor determines that an additional term is in the best interest of the state.
- (4)
 - (a) Four members of the board constitute a quorum for conducting business and exercising board power.
 - (b) If a quorum is present, the action of a majority of members present is the action of the board.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (6) The board and its members are considered to be a governmental entity with all of the rights, privileges, and immunities of a governmental entity of the state, including all of the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

- (7) Meetings of the board, except to the extent necessary to protect the information identified in Subsection 63N-6-412(3), are subject to Title 52, Chapter 4, Open and Public Meetings Act.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-203 Board duties and powers.

(1) The board shall, by rule:

- (a) establish criteria and procedures for the allocation and issuance of contingent tax credits to designated investors by means of certificates issued by the board;
- (b) establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors, including:
 - (i) criteria and procedures for evaluating the value of investments made by the Utah fund of funds; and
 - (ii) the returns from the Utah fund of funds;
- (c) establish criteria and procedures for issuing, calculating, registering, and redeeming contingent tax credits by designated investors holding certificates issued by the board;
- (d) establish a target rate of return or range of returns for the investment portfolio of the Utah fund of funds;
- (e) establish criteria and procedures governing commitments obtained by the board from designated purchasers including:
 - (i) entering into commitments with designated purchasers; and
 - (ii) drawing on commitments to redeem certificates from designated investors;
- (f) have power to:
 - (i) expend funds;
 - (ii) invest funds;
 - (iii) issue debt and borrow funds;
 - (iv) enter into contracts;
 - (v) insure against loss; and
 - (vi) perform any other act necessary to carry out its purpose; and
- (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2)

- (a) All rules made by the board under Subsection (1)(g) are subject to review by the Legislative Management Committee:
 - (i) whenever made, modified, or repealed; and
 - (ii) in each even-numbered year.
- (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review Committee from reviewing and taking appropriate action on any rule made, amended, or repealed by the board.

(3)

- (a) The criteria and procedures established by the board for the allocation and issuance of contingent tax credits shall include the contingencies that must be met for a certificate and its related tax credits to be:
 - (i) issued by the board;
 - (ii) transferred by a designated investor; and
 - (iii) redeemed by a designated investor in order to receive a contingent tax credit.
- (b) The board shall tie the contingencies for redemption of certificates to:
 - (i) for a private investment initiated before July 1, 2015:

- (A) the targeted rates of return and scheduled redemptions of equity interests purchased by designated investors in the Utah fund of funds; and
- (B) the scheduled principal and interest payments payable to designated investors that have made loans initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or
- (ii) for an equity-based private investment initiated on or after July 1, 2015, the positive impact on economic development in the state that is related to the fund's investments or the success of the corporation's economic development plan in the state, including:
 - (A) encouraging the availability of a wide variety of venture capital in the state;
 - (B) strengthening the state's economy;
 - (C) helping business in the state gain access to sources of capital;
 - (D) helping build a significant, permanent source of capital available for businesses in the state; and
 - (E) creating benefits for the state while minimizing the use of contingent tax credits.
- (4)
 - (a) The board may charge a placement fee to the Utah fund of funds for the issuance of a certificate and related contingent tax credit to a designated investor.
 - (b) The fee shall:
 - (i) be charged only to pay for reasonable and necessary costs of the board; and
 - (ii) not exceed .5% of the private investment of the designated investor.
- (5) The board's criteria and procedures for redeeming certificates:
 - (a) shall give priority to the redemption amount from the available funds in the redemption reserve; and
 - (b) to the extent there are insufficient funds in the redemption reserve to redeem certificates, shall grant the board the option to redeem certificates:
 - (i) by certifying a contingent tax credit to the designated investor; or
 - (ii) by making demand on designated purchasers consistent with the requirements of Section 63N-6-409.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session